

PERSONNEL

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Vacation Leave

Adopted Amendment: N.J.A.C. 4A:6-1.2

Proposed: September 20, 2004 at 36 N.J.R. 4199(a)

Adopted: December 1, 2004 by the Merit System Board, Marjorie A. Schwartz, Acting Commissioner, Department of Personnel.

Filed: December 7, 2004 as R.2005 d.19, without change.

Authority: N.J.S.A. 11A:2-6(d), and 11A:6-1 through 11A:6-3; and Executive Order No. 88 (2003).

Effective Date: January 3, 2005.

Expiration Date: June 9, 2008.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on October 18, 2004 in Trenton, New Jersey. Elizabeth Rosenthal served as hearing officer. No comments were received on the proposed amendment at that time, and no recommendations were made by the hearing officer. One written comment was received. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Merit System Practices and Labor Relations, Department of Personnel, P.O. Box 312, Trenton, New Jersey 08625-0312.

Summary of Public Comments and Agency Responses:

COMMENT: B. Sachau commented that all vacation time should be taken in the year earned. The commenter expressed opposition to any carryover of vacation time for employees paid by the State.

RESPONSE: Initially, it is noted that the concept of vacation leave carryover for certain merit system employees is not a new one. N.J.S.A. 11A:6-3, enacted in 1986, has long provided that "...[v]acation leave not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only...." In that instance, an employee may carry over vacation leave for one year when it cannot

be taken in the year in which it was credited due to business necessity. The instant proposed amendment expands the “business necessity” exception based on more recent changes to the Civil Service Act. Thus, the proposal now adopted by the Merit System Board is consistent with statutory law, as well as an executive order approved by the Governor in 2003.

The recently amended N.J.S.A. 11A:6-3 now permits an unlimited period of carryover for State and local employees of vacation leave under limited circumstances. The duration of carryover is subject to an appointing authority’s approved plan for the employee to use the leave or be compensated for the leave. The limited circumstances involve situations in which the Governor has declared a state of emergency and the employee has not taken the leave because of “duties directly related to the state of emergency....” Executive Order No. 88 (2003) concerns State government only. Pursuant to the executive order, an employee called up to military service due to the global war on terrorism may carry over vacation leave credited during that time subject to an appointing authority’s approved plan for the employee to use the leave or be compensated for it. Therefore, in light of the authority provided for vacation leave carryover under limited circumstances by statute and executive order, the Merit System Board is obligated to amend the rules accordingly.

Federal Standards Statement

A Federal standards analysis is not necessary for the adopted amendment as it is governed solely by State law.

Full text of the adopted amendment may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6-1.2.

4A:6-1.2 Vacation leave

(a) – (e) (No change.)

(f) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave[.] , provided, however, that:

1. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave.

2. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service who is called to active duty in response to the continuing global war on terrorism, armed conflict with Iraq, or other areas of heightened tension throughout the world, including the defense of the Homeland Security of the United States, shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave; and

3. In local service, vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave.

(g) – (j) (No change.)